IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPEAL NO.249 OF 2007

Balu alias Bablu alias Vinay Kisan Jadhav
residing at Bhui Ali, Talegaon
Dabhade, Tal:Maval,
Dist.Pune
At present accused in Yervada Central Prison ...Appellant.
(Orig.Accd.no.2)

V/s.

The State of Maharashtra
(At the instance of Talegaon Dabhade P.S.) ...Respondent.

Shri Harshad Bhadbhade, adv. for the appellant.

Smt.M.H.Mhare, the learned APP for the respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 25th June, 2007.

ORAL JUDGMENT:

1. Heard Mr.Harshad Bhadbhade the learned counsel for the appellant and Smt.M.H.Mhatre the learned APP for the State.

2. The appellant was accused no.2 in Sessions Case No.455 of 2000 decided by the Additional Sessions Judge, Pune on 23rd July, 2003 whereby the appellant and the accused no.1 Balu Pandharinath Takle were convicted for the offence punishable under Section 395 read with Section 397 of the I.P.C. and were sentenced to undergo R.I. for 7 years and to pay a fine of Rs.5,000/- each and in default to pay fine, to undergo further R.I. for

six months.

3. Prosecution story in brief was that the complainant Rameshkumar Jain , a jeweller was travelling by auto-rickshaw with ornaments and cash. At that time the accused nos.1 and 2 came abruptly and stopped him. Accused no.2 gave a blow on his head with iron rod while the accused no.1 was armed with sickle . They snatched the bag containing an amount of Rs.70,000/- and the gold ornaments worth Rs.7 lakhs. After snatching the bag, both these persons escaped by Maruti car. Initially on the report lodged by the complainant Ramesh, the offence under Section 394 read with Section 397 was registered. However, later on Deepak accused no.3 was arrested and during interrogation of said Deepak, the police found that two more persons namely, accused no.4 Vilas Kalamkar and the deceased Raibirsingh were also involved. Therefore, Section 395 of the I.P.C. was invoked. As Raibirsingh had died, accused nos.1 to 4 were put to trial for the offences punishable under Sections 395 read with Section 397 of the I.P.C. They pleaded not guilty. After trial, the learned Additional Sessions Judge acquitted the accused no.3 Deepak and accused no.4 Vilas and convicted only the accused nos.1 and 2 for the offences punishable under Sections 395

read with Section 397 of the I.P.C.

4. The learned counsel for the appellant has pointed out that the accused no.1 Balu had preferred Criminal Appeal No.1153 of 2003 and the said appeal was decided by this Court (Coram: A.M.Khanwilkar, J.) by judgment dated 29th August, 2006. This Court found that there was no material on record to show that five or more persons were involved in the commission of offence and as per the evidence on record, only two persons had actually participated in the offence and at the most driver of the vehicle could be treated as their accomplice. In such circumstances, offence of dacoity was not proved and the conviction could not be under Section 395 read with Section 397 of the I.P.C. The learned counsel for the appellant rightly contended that the same logic is applicable to the present appellant also as he was accused no.2 in the said case. I find that the observations made by this Court in the appeal preferred by the accused no.1 are equally applicable to the present appellant also. Therefore, conviction of the present appellant under Section 395 read with Section 397 can not be sustained. The evidence reveals that the present appellant had assaulted on the head of the complainant and caused injuries, therefore, offence under Section 394 of the I.P.C. was committed. In the

appeal filed by the accused no.1 Balu Takle , his conviction under Section 395 read with Section 397 was converted to conviction under Section 394 of the I.P.C. He was directed to undergo sentence as already undergone.

5. The learned counsel for the appellant contends that the same logic should be applicable to the present appellant also. However, I find that the present appellant/accused was having iron pipe and he had used the same as weapon of offence by giving blow on the head of the complainant. It may be deemed to be a deadly weapon because it is likely to cause death when used to assault on the vital part of body like head. Therefore, in my considered opinion, the accused/appellant may be convicted for the offence punishable under Section 394 read with Section 397 of the I.P.C. When Section 397 is applied, minimum sentence of imprisonment shall not be less than imprisonment for 7 years. It may be noted that the accused Balu has already been released in view of the judgment of this Court while the present appellant is still in jail. Taking into consideration this aspect, in my opinion, the fine amount may be slightly reduced so that the present appellant may also get benefit in the sentence.

6. Appeal is partly allowed. Impugned judgment

and order to the extent of his conviction for the offence punishable under Section 395 read with Section 397 I.P.C. is hereby set aside. Instead, he is convicted for the offence punishable under Section 394 read with Section 397 of the I.P.C. and is sentenced to undergo R.I. for 7 years and to pay a fine of Rs.1,000/- and in default to undergo further R.I. for one month. Other directions given by the trial Court regarding disposal of muddemal property as well as making substantive sentence of imprisonment in the present case to run concurrently with the sentence awarded in Special Case No.4 of 2002 under provisions of M.C.O.C.Act shall remain undisturbed. The appellant is in custody since 31-5-2000 and thus, he is already in jail for slightly more than 7 years. Therefore, if he has completed the sentence of the present case, he be set at liberty forthwith if not required in any other case.

(J.H.Bhatia,J.)